IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 13957 of 2007
DATE OF DECISION: 1.10.2007

M/s Wire Syndicate

…Petitioner

Versus

State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Vishal Aggarwal, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for the respondents.

M.M. KUMAR, J.

The prayer made in this petition filed under Article 226 of the Constitution is for issuance of direction to the respondents to refund an amount of Rs. 2,00,000/- deposited by the petitioner in pursuance to order dated 9.1.2006 (P-2), passed by a Division Bench of this Court in an earlier petition, being C.W.P. No. 116 of 2006, filed by the petitioner. It has further been prayed that order dated 17.5.2007 (P-6) be quashed, which has been passed by the Director of

Industries & Commerce, Punjab-respondent No. 2, refusing to refund the aforementioned amount.

Facts in brief may first be noticed. The petitioner earlier filed C.W.P. No. 116 of 2006 challenging illegal demand of penal interest demanded by respondent Nos. 1 and 2. A Division Bench of this Court, vide its order dated 9.1.2006 issued notice of motion to the respondents and also passed interim direction observing that in the meanwhile subject to the petitioner depositing an amount of Rs. 2,00,000/- with respondent No. 2 in two equal instalments towards interest, the petitioner was not to be arrested, as was postulated by the notice dated 26.12.2005, which was subject matter of challenge in that petition. Accordingly, the petitioner deposited the instalments on or before 23.1.2006 and 28.2.2006. The aforementioned writ petition was disposed of on 11.9.2006 with the following observations:-

> " Counsel for the petitioner states that after passing of the order, referred to above the State of Punjab has withdrawn the imposition of penal interest. In view of the said decision taken, the petitioner wishes to withdraw this writ petition. On request made dismissed as withdrawn.
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> In view of abolition of penal interest, as has been stated by the counsel for the respondent, Rs. 2 lacs deposited by the petitioner under orders of this Court be refunded to him, if no amount is due from him.

Needful be done within two months from the date of receipt of copy of this order."

The respondents filed a review application on 30.11.2006 seeking review of the order dated 11.9.2006 asserting that the petitioner was not entitled for refund of amount of Rs. 2,00,000/-. In other words respondents understood the order to mean that the petitioner was to be given refund of Rs. 2,00,000/-. The review application was dismissed on 23.2.2007 with a direction to correct typographical error (P-5). It has, thus, been directed that in the concluding line of last but one para, the word 'respondent' be read as 'petitioner'.

It has not been disputed that notification dated 28.11.2006 has been published by the Punjab Government waiving the element of penal interest (P-4). The application for review of order dated 11.9.2006 was filed on 30.11.2006 in which specific prayer was made that the petitioner was not entitled for refund of the amount of Rs. 2,00,000/-. The respondents clearly understood the order dated 11.9.2006 to mean that it had directed refund of Rs. 2,00,000/- because otherwise there was no need to seek its review. The review application was dismissed on 23.2.2007. However, respondent No. 2 rejected the application made by the petitioner for refund on the preposterous ground that this Court in its order dated 11.9.2006 had directed that amount of Rs. 2,00,000/- deposited by the petitioner under the direction issued by this court on 9.1.2006 in C.W.P. No. 116 of 2006, be refunded only if no amount was due from

the petitioner. It is beyond comprehension that understanding of respondent No. 2 with regard to same order dated 11.9.2006 has undergone complete change after the dismissal of review petition. The view of respondent No. 2 is discernible from the concluding paras, which reads as under:-

> " I have gone through the case file. M/s Wire Syndicate was liable to pay the amount of penal interest i.e. Rs. 2,20,627/-. In the Notification dated 28.11.2006 it has been specifically mentioned that those who have deposited interest/peal interest in the past, nothing shall be reimbursed/refunded to them. As per the notification dated 28.11.2006 the penal interest has been waived off of industrial units who have availed the interest free loan under the Punjab Draft Industrial Policy 1973 and under the Punjab Industrial Policy 1978 and their cases are to be closed provided that such units make payment of entire principle amount due on account of interest. Free loan availed by them within a period of three months from the date of publication of this notification in the newspaper.
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> It is further provided that penal interest of those units who have availed interest free loan under the above policy and have already deposited principle amount with partial interest or without penal interest shall also be waived off and their cases will be closed. However,

those who have deposited the interest/penal interest in past, nothing shall be reimbursed/refunded to them.

In view of above the unit is not entitled of refund of Rs. 2-00 lac which has been deposited. It is further stated that Hon'ble High Court vide order dated 11.9.2006 has ordered that Rs. 2 lacs deposited by the petitioner under order of this court be refunded to him, if no amount is due from him. However, the amount of Rs. 2,20,627/- towards simple penal interest as per policy has been due from M/s Wire Syndicate. Therefore, I do not find this Industrial Unit eligible for refund of Rs. 2 lacs because the amount of Rs. 2 lacs was deposited by the unit before the issue of the above said notification. However, the Industrial Unit is entitled for the waiver benefit of penal interest amounting to Rs. 20,627/- under the notification dated 28.11.2006 and the same is allowed to it."

After hearing learned counsel for the parties at a considerable length we find that the stand of respondent No. 2 is untenable in the eyes of law. It is admitted position that an amount of Rs. 2,00,000/- was deposited by the petitioner in pursuance to the directions issued by this Court on 9.1.2006 in the writ petition filed by the petitioner (C.W.P. No. 116 of 2006). It could also not be disputed that the Division Bench while disposing of the aforementioned writ petition on 11.9.2006 has held that on account of

abolition of penal interest the amount deposited by the petitioner be refunded if there was no other amount due from it. The interpretation given to this order by respondent No. 2 defies common sense because it has been said in the impugned order that penal interest was due from the petitioner. The order of the Division Bench could only mean that apart from penal interest if any other amount was due from the petitioner, the same could have been recovered. Moreover, the application for review was filed by the respondents after issuance of notification dated 28.11.2006 waiving penal interest. It was claimed in the review application that the petitioner did not become entitle to refund, which was dismissed on 23.2.2007 when it was pointed out that the notification waiving penal interest had, in fact, been notified. The respondents clearly understood the order dated 11.9.2006 to mean that it had directed refund of Rs. 2,00,000/- because otherwise there was no need to seek its review. The review application was dismissed on 23.2.2007. It is beyond comprehension that understanding of respondent No. 2 with regard to same order dated 11.9.2006 has undergone complete change after the dismissal of review petition. The impugned order appears to have been passed on the basis of presumption that notification dated 28.11.2006 would not apply to the payments made earlier. Such a principle of retrospective application of notification would not arise in the present case because the deposit made by the petitioner under orders of this Court were subjected to further orders, which was to the effect that the petitioner was to be refunded the amount of penal interest, if any other amount

was not due from it. Therefore, the impugned order dated 17.5.2007 (P-6) is liable to be quashed.

For the reasons aforementioned, the writ petition succeeds and order dated 17.5.2007 (P-6) is hereby quashed. The amount of Rs. 2,00,000/- deposited by the petitioner in pursuance to the direction of this Court, dated 9.1.2006, be refunded to it within a period of four weeks from the date of receipt of certified copy of this order.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 1, 2007
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FIT FOR INDEXING